IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1948 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIV DAYA MANDAL PANJARAPOL - Applicant(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR VIRAT G POPAT for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR DC DAVE for Respondent Nos.2 and 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner herein – original respondent has prayed for an appropriate writ, order

and/or direction quashing and setting aside the judgement and order dtd.21/11/2006 passed by the learned Additional Sessions Judge, Gandhidham at Kutch in Criminal Revision Application No.60 of 2006 in allowing the same by quashing and setting aside the order passed by the learned Judicial Magistrate (First Class), Bhachau by which the learned Judicial Magistrate (First Class) passed an order below application Mark 22, 24, 19 and 34 directing that muddamal livestock be handed over to the petitioner herein during the pendency and final disposal of the trial arising out of the complaint being CR No.II-3126 of 2006.

2. The following few facts are necessary for disposal of the present petition:-

3. Two Tempoes loaded with 241 sheep and she goats were seized by the Bhachau Police Station for which a criminal complaint being CR No.II-3126 of 2006 came to be registered with Bhachau Police Station against the respondent Nos.2 and 3 herein and other accused, for the offences punishable under secs.5, 6 and 10 of Bombay Animal Prevention Act and under secs.11(d)(3)(e) of the Prevention of Cruelty to Animals Act for illegally taking livestock of sheep and goats for slaughtering. The

respondent Nos.2 and 3 herein applied for release of the said livestock before the learned Judicial Magistrate (FC), Bhachau at Kutch and requested to hand over the interim custody of the said livestock to them contending inter-alia that they have purchased the livestock and engaged the vehicle bearing GJ-12V-6492 being driven by Abdul Fakirmamad Sumar and Tofiq Mamad Lakha and handed over 124 she goats and vehicle No.GJ-1T-8000 being driven by one Haji Osman Gagada and Hussainsha Barkarsha entrusted 117 numbers of she goats and sheep who were carrying the said animals to village Lakhadia. That the learned Magistrate issued notice to the investigating officer and the investigating officer informed the learned Magistrate that the said livestock had been kept with the petitioner – Jiv Daya Mandal Panjarapol Bhachau at Kutch and he objected the release of the said livestock in favour of the respondent Nos.2 and 3.

4. That the learned Magistrate, Bhachau at Kutch by his order dtd.13/10/2006 dismissed the application Mark 22 and 24, by which the respondent Nos.2 and 3 prayed for handing over the muddamal livestock to them. However, allowed the application Mark 19 and 34 by handing over

the muddamal vehicles on certain conditions. By the said order, the learned Magistrate also passed an order that the possession of the muddamal livestock i.e. 241 sheep and she goats, be kept with the petitioner Jiv Daya Mandal Panjarapol, Bhachau under their care on certain conditions inclusive of directing that all the sheep and she goats be medically examined by the veterinary Doctor and periodical report be sent to the Court.

5. Being aggrieved by and dissatisfied with the order passed by the learned Judicial Magistrate (First Class), Bhachau dtd.13/10/2006 dismissing the applications Mark 22 and 24 submitted by the respondent Nos.2 and 3 rejecting the prayer of the respondent Nos.2 and 3 in not handing over the possession of the muddamal livestock to them, the respondent Nos.2 and 3 preferred Criminal Revision Application No.60 of 2006 before the learned Additional Sessions Judge, Gandhidham at Kutch which came to be heard by the learned Additional Sessions Judge, Gandhidham at Kutch, who vide his judgement and order dtd.22/11/2006 allowed the said Revision Application by quashing and setting aside the order passed by the learned Judicial Magistrate (First Class), Bhachau dtd.13/10/2006 and further passing an order to hand over

possession of the muddamal livestock i.e. sheep and she goats to the respondent Nos.2 and 3 on certain conditions as mentioned in the impugned judgement and order. Being aggrieved by and dissatisfied with the judgement and order passed by the learned Additional Sessions Judge, Gandhidham at Kutch dtd.21/11/2006 in Criminal Revision Application No.60 of 2006, the petitioners – original respondent No.2 has preferred the present petition under Article 227 of the Constitution of India.

6. Mr.Virat G.Popat, learned advocate appearing on behalf of the petitioner has vehemently submitted that the revisional court has committed an error in allowing the Revision Application and quashing and setting aside the order passed by the learned Judicial Magistrate (First Class) and in passing the order of handing over the muddamal livestock to the respondent Nos.2 and 3. It is submitted that the learned Additional Sessions Judge has wrongly relied upon the ratio laid down in the case of Manager, Panjarpol, Deodar vs. Chakaram Moraji Nat, reported in 1998 (2) G.L.H. 614. It is further submitted that the learned revisional court has materially erred in not properly considering and/or appreciating the antecedents of accused persons. It is submitted that the

antecedents of the accused persons are relevant consideration for handing over the possession of the muddamal livestock. It is submitted that the learned revisional court has not properly appreciated the report of the investigating officer and the complaint dtd.7/10/2006, which clearly reveal that the livestock was transported for slaughtering and not for any other purpose. It is submitted that the learned Sessions Judge has erred in holding that there is no evidence adduced to show that the livestock was being transported for slaughtering. It is submitted that still the investigation of the offence was going on and even charge-sheet was not filed, therefore, the conclusion of the learned Sessions Judge was premature. It is submitted that when 241 sheep and she goats were transported in two Tempoes, which ipso facto proves that there was cruelty on the animals and no owner would take the livestock in such a manner, unless it is meant for slaughtering. Learned advocate appearing on behalf of the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of State of U.P. Vs. Mustakeem & Others, reported in 2002 (3) GLH UJ 8 in support of his prayer to allow the present petition and to quash and set aside the order passed by the revisoinal

court and restore the order passed by the learned Judicial Magistrate (F.C.) by further submitting that when the learned Judicial Magistrate (FC) exercised the discretion in favour of Panjarapol, the same was not required to be interfered with by the learned Sessions Judge in exercise of revisional jurisdiction. He has also further submitted that a statement was made before the learned revisional court by way of filing affidavit on behalf of the accused persons that there are no antecedents and there were no case against the revisionists. However, so far as some of the accused are concerned, there were 14 antecedents and even against the accused persons / revisionists also there were antecedents and therefore, it is clear that a false statement was made before the revisional court. Making the above submission, it is requested to allow the present petition.

7. The petition is opposed by Mr.D.C. Dave, learned advocate appearing on behalf of the respondent Nos.2 sand 3. It is submitted that as rightly observed by the learned revisional court, there was no evidence that the livestock – 241 she goats sand sheep, was transported for slaughtering and therefore, relying upon the decisions of this Court in the case of Manager, Panjarpol, Deodar

(supra), learned revisional court has rightly allowed the revision application by quashing and setting aside the order passed by the learned Magistrate and by handing over the possession of the muddamal livestock to the respondent Nos.2 and 3. It is submitted that there is no jurisdictional error much less error of law which requires interference of this Court under Article 227 of the Constitution of India.

8. Mr.Dave, learned advocate has relied upon the decisions in the case of Manager, Panjarpol, Deodar vs. Chakaram Moraji Nat, reported in 1997 (2) GLR 1321; Vadhwan Mahajan Panjaraople Vs. State of Gujarat and another, reported in 2000(4) GLR 3461 and unreported decision of this court in the case of Rahimbhai Adambhai Tarkavadia Vs. State of Gujarat rendered in Special Criminal Application No.1540 of 2006.

9. So far as the antecedents alleged against the respondent Nos.2 and 3 are concerned, it is submitted by Mr.Dave that FIR being CR No.II-84 of 1996 was filed against the respondent No.2 before the Bhimasar Police Station under sec.11D, E, F, H & R of the Prevention of Cruelty to Animal Act, 1960. However, the same has been finalised

and the respondent No.2 in the said case has been acquitted. It is also further submitted that so far as the respondent No.3 is concerned, no case under the Bombay Police Act is registered against him with Bhuj Taluka Police Station vide CR No.III-21 of 1995 as alleged. It is submitted that respondents have not deliberately filed affidavit dtd.16/8/2006 before the revisional court to obtain favourable order from the court. It is submitted that livestock i.e. Sheep and she goats were purchased by the respondent Nos.2 and 3 for their use only and therefore, it is requested to dismiss the present petition.

10. Heard the learned advocates appearing on behalf of her respective parties.

11. At the outset, it is required to be noted that there were 241 sheep and she goats taken in two Tempoes which itself suggests that there were cruelty on the animals, otherwise, 241 sheep and goats could not have been transported in two Tempoes. It is also required to be noted that in the complaint allegations against the respondent Nos.2 and 3 and other accused are for the offences punishable under secs.5,6 and 10 of the Bombay Animal Protection Act and under sec.11D (3)(e) of Prevention of Cruelty to Animals Act, 1960 and it is

alleged against the accused persons that the said livestock was being transported for the purpose of slaughtering. An affidavit was filed on behalf of the respondent Nos.2 and 3 before the revisional court submitting that the they are not having any antecedent and the present case was the first case registered against them which seems to be incorrect, as it is admitted by the respondent No.2 in the affidavit dtd.6/8/2007 that, in fact, an FIR was registered against the respondent No.2 with Bhimasar Police Station under sec.11D, E, F, H and R of Prevention to Cruelty to Animal Act, 1960. The respondent No.2 might have been acquitted but it cannot be said that no case was registered against the respondent No.2. It is also required to be noted that in all there are nine accused in the FIR and most of them are internally related with each other and other accused are father and cousins of the respondent Nos.2 and 3 herein and as so stated in the further affidavit of the petitioner dtd.30/7/2007, more than 16 offences for the similar offences are registered against them. Further, the brother of the respondent No.3 who is also an accused in the present offence is facing charge of similar nature. It appears that correct facts were not brought to the notice

of the revisonal court and on the contrary false affidavit has been filed before the learned revisonal court submitting that this is the first case registered against them. Thus, it appears that the learned revisonal court was mislead. Therefore, when the allegations in the FIR are that the livestock - sheep and she goats, was being transported for slaughtering and looking to the antecedents of the respondent nos.2 and 3 and other accused, who are relatives i.e father and cousins, learned revisonal court was not justified in handing over the possession of the muddamal livestock to the respondent Nos.2 and 3. In the case of State of U.P. Vs. Mustakeem & others (Supra), the Hon'ble Supreme Court has allowed the Criminal Appeal by quashing and setting aside the order / direction of the court directing release of the animals in favour of the owners. In that case the allegations were that the animals were transported for the purpose of being slaughtered and the Hon'ble Supreme Court has observed that “We are shocked as to how, the said order could be passed by the learned Judge of the High Court in view of very allegations and in view of the charges which the accused may face in the criminal trial” and allowing the said appeal, the Hon'ble

Supreme Court directed that the said animals be kept in Gaushala.

12. Now, so far as the decision of the learned Single Judge relied upon by the learned advocate appearing on behalf of the respondent nos.2 and 3 in the case of Manager, Panjarpol, Deodar vs. Chakaram Moraji Nat (supra), is concerned, the question before the learned Single Judge was that whether giving custody of animals to the Panjarapol is mandatory considering secs.29 and 35 of the Prevention of Cruelty to the Animal Act, 1960 or not and considering the scheme of the Act, the learned Single Judge observed that sec.35(2) does not cast any duty on the court to give custody to Panjarapol as a rule and the learned Single Judge held that if it is for the first offence, unless there are strong reason to believe that if the custody of the animal is given to the owner, the animal will be further exposed to cruelty, the custody should be given to the owner or the persons from whose possession the animal is taken.

13. Even in the case of Vadhwan Mahajan Panjaraople Vs. State of Gujarat (supra) while laying down certain general guidelines, it is observed that the court shall consider whether it is first offence alleged or he has been found

guilty of the offence under the Act earlier and that a Magistrate has discretion to give interim custody either to Panjarapol or to owner. It is also required to be noted that in the said case it was argued on behalf of the Panjarapol that where owner is claiming custody of the animal, Panjarapol has a preferential right, which is negatived by the learned Single Judge. Therefore, what is required to be considered while passing an order of interim custody of muddamal livestock is whether it is the first offence alleged and the allegations against the accused are for transportation of livestock for slaughtering. In the present case, so far as the respondent No.2 is concerned, he was already tried for the similar offence earlier. Of course, he was acquitted and not only that but so far as the other co-accused are concerned, they all are relatives of the accused Nos.2 and 3 and in all 16 cases have been registered against them for the similar offences. The allegations in the FIR are very clear with respect to cruelty on animals and that the livestock of 241 sheep and she goats were being transported only in two Tempoes and that too for slaughtering. It is also required to be noted at this stage that after the investigation is over, now charge-sheet is filed against the accused

persons for the alleged offences. Thus, there is prima facie case against the accused persons. Under the circumstances, the learned Additional Sessions Judge has materially erred in allowing the revision application quashing and setting aside the order passed by the learned Judicial Magistrate (FC) in rejecting the application submitted by the respondent Nos.2 and 3 for handing over the interim custody of the livestock to the respondent Nos.2 and 3 and handing over the interim custody to Panjarapol. When in the facts and circumstances of the case the learned Judicial Magistrate (FC) exercised the discretion in favour of the Panjarapol and in passing the order rejecting the application of the respondent Nos.2 and 3 for interim custody, the revisional court was not justified in interfering with the same in exercise of revisional jurisdiction. Under the circumstances, and considering the decision of the Hon'ble Supreme Court in the case of State of U.P. Vs. Mustakeem & Others (supra), the judgement and order passed by the revisinal court deserves to be quashed and set aside.

14. For the reasons stated above, the petition succeeds. The impugned judgement and order passed by the learned

Additional Sessions Judge, Gandhidham at Kutch dtd.21/11/2006 in Criminal Revision Application No.60 of 2006 is hereby quashed and set aside and the order passed by the learned Judicial Magistrate (FC), Bhachau-Kutch below Mark 22 and 24 is hereby restored. Rule is made absolute accordingly.

15. The trial court is directed to complete the trial as early as possible, preferably within a period of six months from the date of receipt of writ of this order.

(M.R. SHAH, J.)

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